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<b>Report To:</b>	<b>Education &amp; Communities Committee</b>	<b>Date:</b>	<b>8 May 2018</b>
<b>Report By:</b>	<b>Head of Environmental and Public Protection</b>	<b>Report No:</b>	<b>EDCOM/45/18/DH</b>
<b>Contact Officer:</b>	<b>Drew Hall</b>	<b>Contact No:</b>	<b>7214272</b>
<b>Subject:</b>	<b>The Scottish Government's new Private Residential Tenancy</b>		

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## 1.0 PURPOSE

- 1.1 The purpose of this report is to advise the Committee of the introduction of the Scottish Government's new Private Residential Tenancy

## 2.0 SUMMARY

- 2.1 The tenancy system establishes the legal agreement between tenant and landlord, and helps ensure that the private rented sector functions well. The Private Housing (Tenancies) (Scotland) Act 2016 commenced on 1 December 2017 and introduced the new 'Private Residential Tenancy'. The new Private Residential Tenancy replaces assured and short assured tenancy agreements for all new private tenancies created from 1 December 2017 onwards; any existing assured and short assured tenancy agreements will continue unless renewed.
- 2.2 All landlord and tenant disputes will be heard in a new specialist tribunal and from January 2018, all letting agents will be required to register and adhere to a code of practice. The new tenancy will provide tenants with indefinite security of tenure, subject to the grounds for eviction, meaning an end to 'no-fault' evictions.
- 2.3 The private rented sector plays an important role in the housing system in Scotland. There has been a marked increase in private rented accommodation across Scotland and in Inverclyde the sector now comprises 10% of all households. As the strategic housing authority, the Council is responsible for ensuring that the sector assists in providing a sustainable housing option and is fit for purpose.
- 2.4 There is evidence to suggest that lower income households are sometimes unable to access either the social rented sector or owner occupation and are increasingly turning to the Private Rented Sector (PRS) to meet their housing needs. The Scottish Government's new Private Residential Tenancy aims to ensure that the PRS provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.

## 3.0 RECOMMENDATION

- 3.1 That the Committee notes the introduction of the Scottish Government's new Private Residential Tenancy and the implications it may have on the private rented sector in Inverclyde.

**Martin McNab**  
**Head of Environmental and Public Protection.**

## 4.0 BACKGROUND

- 4.1 The Scottish Government publication 'A place to stay, a place to call home: a strategy for the private rented sector in Scotland' contained an action to review the current tenancy regime to ensure it was fit for purpose and met the growing demand for private rented housing from a range of different household types, including families. In September 2013, a stakeholder-led group was established to review private tenancies.
- 4.2 The group made one main recommendation, namely that the current assured tenancy regime be replaced for all future private sector lets. The group also agreed that the new system should provide clarity, simplicity, ease of use and flexibility.
- 4.3 Ministers accepted the recommendation and consulted widely with stakeholders during the development of the new tenancy.
- 4.4 To improve standards across the private rented sector, the Scottish Government are:
  - bringing greater security for tenants, balanced with appropriate safeguards for landlords, through the **Private Residential Tenancy**.
  - **Increasing regulation to the sector** by introducing a framework for the regulation of letting agents and new guidance to assist with landlord registration, whilst maintaining the licensing of houses in multiple occupation.
  - providing **support with dispute resolution**.
  - introducing **rent pressure zones**.

## 5.0 PRIVATE RESIDENTIAL TENANCY

- 5.1 The tenancy will provide security, stability and predictability for tenants and appropriate safeguards for landlords, lenders and investors. The new tenancy commenced on 1 December 2017 and will:
  - be an open-ended tenancy, which means a landlord will no longer be able to ask a tenant to leave simply because the fixed term has ended
  - provide more predictable rents and protection for tenants against excessive rent increases
  - include the ability to introduce local rent caps for rent pressure areas
  - provide comprehensive and robust grounds for repossession that will allow landlords to regain possession using one (or more) of 18 grounds for eviction.
- 5.2 Any existing short assured and assured tenancies will continue, but new tenancies granted in the private rented sector from December 2017 will be private residential tenancies.
- 5.3 The Scottish Government have developed guides on their website for landlords and tenants about the Private Residential Tenancy along with an online Private Residential Tenancy agreement form.
- 5.4 **Regulating the sector**

Various measures regulate the private rented sector to ensure letting agents, landlords and properties meet certain standards

  - **letting agents registration**

- **landlord registration**
- **licensing of homes in multiple occupancy (HMOs)**

## 5.5 **Letting Agents Registration**

Letting Agents play an important role assisting the private rented sector in being professional and well managed; and providing good-quality homes which people need. A new Letting Agents Code of Practice came into effect on 31 January 2018. Any letting agent must register, meeting a fit and proper person test, and complete relevant training. It will provide a route of redress for tenants and landlords to resolve complaints against letting agents for breaches of the Code.

The Scottish Government has introduced a framework for the regulation of letting agents to help improve customer service and professionalism within the industry.

This framework includes:

- a statutory **letting agent code of practice** which comes into force on 31 January 2018. It sets out the service standards that letting agents must meet and will give tenants and landlords the ability to challenge poor practice.
- mandatory **registration of letting agents** – applicants will be required to be assessed as 'fit and proper' to undertake letting agency work and meet minimum training standards to be admitted to the letting agent register.
- a new means of redress to the **First-tier Tribunal for Scotland (Housing and Property Chamber)** - landlords, tenants and Scottish Ministers will be able to go to the tribunal where there has been a breach of the code of practice. Where an agent has failed to comply with the code, the tribunal must issue an enforcement order setting out the steps the letting agent must take to rectify the problem.
- **powers for Scottish Ministers** to obtain information and powers of inspection, to assist in monitoring compliance.

These measures will give landlords and tenants confidence in the standard of service they should expect from a letting agent and give them the means to challenge poor practice where this arises.

It will be a criminal offence to do letting agency work without being on the register and could result in a maximum fine of £50,000 or 6 months imprisonment or both. Letting Agents must have submitted an application by 1 October 2018.

## 5.6 **Landlord Registration**

Private landlords must register with their local authority and ensure they meet the legal requirements for letting houses. Local authorities are responsible for enforcing landlord registration. They must be satisfied that the landlord is a fit and proper person to let houses before they can be entered on the register. Operating as a landlord without being registered or having applied to be registered is a criminal offence, subject to a maximum £50,000 fine and suspension of rent payments.

The landlord registration scheme:

- provides a register of all private landlords for public inspection (with the added assurance that the council has conducted a 'fit and proper person' test).
- provides a regularly updated register that can be used to help communication between councils and landlords and other interested parties, for example in assisting with repairs.
- ensures that landlord registration enforcement action is focused on tackling the worst landlords in the sector, including those who fail to act to minimise their tenants' anti-social behaviour.

Landlords have a legal duty to pay any tenancy deposit they receive into an approved tenancy deposit scheme to protect deposits until they are due to be repaid. Landlords also have a legal duty to provide new tenants with a tenant information pack (revised December 2016).

## 5.7 **Houses in Multiple Occupation Licensing**

Mandatory licensing applies to houses or flats occupied by three or more unrelated people, who share bathroom or kitchen facilities. HMOs must meet physical standards set by the licensing local authority under the Housing (Scotland) Act 2006, part 5. The owner of an HMO must have a licence from the local authority where the property is situated. Licensing helps ensure that accommodation is safe, well managed and of good quality.

Before granting a licence the local authority must be satisfied that:

- the owner and any manager of the property is 'fit and proper' to hold a licence.
- the property meets required physical standards the property is suitable for use as an HMO (or could be made so by including conditions in the licence).

HMOs are also covered by fire safety legislation.

The local authority sets the standards required and also sets the fees charged for a licence application. Scottish Ministers have issued guidance to local authorities on the licensing of HMOs.

It is a criminal offence to operate an HMO without a licence. The maximum fine is £50,000. Local authorities have a range of other enforcement options, including power to vary the terms of a licence or revoke it. An HMO licence can also be revoked if the owner or agent, or the living accommodation, is no longer suitable.

## 5.8 **Dispute Resolution**

Determinations of rent or repair issues in private sector housing as well as assistance in exercising a landlord's right of entry are dealt with by the First-tier Tribunal for Scotland (Housing and Property Chamber). The Chamber also provides relatively informal and flexible proceedings to help resolve issues between homeowners and property factors. The Council also plays a role in matters such as ensuring any disrepair is addressed.

The Tribunal's functions replaced those of the Private Rented Housing Panel and the

Homeowner Housing Panel on 1 December 2016. From 1 December 2017, the chamber I assumed jurisdiction from the sheriff courts for civil cases relating to the private rented sector (criminal cases will remain with the sheriff courts). It will also hear cases related to new private residential tenancies and the new letting agents regime.

## 5.9 Rent Pressure Zones

From 1 December 2017, local councils can apply to Scottish Ministers to have an area designated as a 'rent pressure zone' (RPZ) if they can prove that:

- rents in the area are rising too much.
- the rent rises are causing problems for the tenants.
- the local council is coming under pressure to provide housing or subsidise the cost of housing as a result.

A rent pressure zone will only apply to rent increases for tenants with a Private Residential Tenancy. Rent increases for tenants with a short assured or assured tenancy will not be affected.

If an area is designated as an RPZ, it means a cap (maximum limit) is set on how much rents are allowed to increase for existing tenants with a Private Residential Tenancy each year in that area. Scottish Ministers must consult landlords' and tenants' representatives before they make any area a rent pressure zone.

## 6.0 IMPLICATIONS

### 6.1 Financial Implications

There are no direct financial implications arising from the new Private Residential Tenancy at present.

### 6.2 Legal Implications

In acknowledging this report, the Committee and the Council agree to uphold The Private Housing (Tenancies) (Scotland) Act 2016.

### 6.3 Human Resources Implications

Currently being met and will continue to be met within existing staffing.

### 6.4 Equalities Implications

When delivering services to our customers, full cognisance is taken of equality and diversity processes and procedures.

	YES (see attached appendix)
X	NO - This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy. Therefore, no Equality Impact Assessment is required.

### 6.5 Repopulation Implications

The new legislation aims to ensure that the private rented sector functions well by improving the legal agreement between tenant and landlord. This should positively impact on both the quality of housing stock and the perception of the private rented sector. The

new Private Residential Tenancy is key to retaining the existing population and may help attract new residents into the Inverclyde Council area.

## **7.0 CONSULTATIONS**

7.1 None

## **8.0 LIST OF BACKGROUND PAPERS**

8.1 Members will recall receiving 'Member Briefing Note - Private Residential Tenancy' in Appendix 1 February 2018, please find this attached at Appendix 1.

**Member Briefing Note – Private Residential Tenancy**  
**The Private Housing (Tenancies) (Scotland) Act 2016 – Main Points**

The Private Housing (Tenancies) (Scotland) Act 2016 commenced on 1 December 2017 and introduced the new 'Private Residential Tenancy' which replaces assured and short assured tenancy agreements for all new private tenancies created from 1 December 2017 onwards; any existing assured and short assured tenancy agreements will continue unless renewed.

The new tenancy will provide tenants with indefinite security of tenure, subject to the grounds for eviction, meaning an end to 'no-fault' evictions.

All landlord and tenant disputes will be heard in a new specialist tribunal; and from January 2018, all letting agents are now required to register and adhere to a code of practice.

The private rented sector plays an important role in the housing system in Scotland. There has been a marked increase in private rented accommodation across Scotland and in Inverclyde the sector now comprises 10% of all households. As the strategic housing authority, the council is responsible for ensuring that the sector assists in providing a sustainable housing option and is fit for purpose.

The Scottish Government's new Private Residential Tenancy aims to ensure that the private rented sector provides good quality homes and high management standards, inspires consumer confidence, and encourages growth through attracting increased investment.

In summary, to improve standards across the private rented sector, the Scottish Government are:

- bringing greater security for tenants and appropriate safeguards for landlords
- Increasing regulation to the sector
- providing support with dispute resolution
- introducing rent pressure zones

For more information on the changes to the private rented sector please visit the Housing section of the Inverclyde Council website, <https://www.inverclyde.gov.uk/housing>